

JUN 17 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARYBefore the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

MM Docket No. 92-266
(Supplemental Rule on
Survey Sample)

TO: THE COMMISSION

COMMENTS OF COUNSEL
TO THE MUNICIPAL FRANCHISING AUTHORITIES
(DUNCAN, WEINBERG, MILLER & PEMBROKE, P.C.)

On May 3, 1993, the Federal Communications Commission ("FCC") issued its final rule implementing Rate Regulation procedures under the Cable Television Consumer Protection and Competition Act of 1992 ("Cable Act of 1992"). In that Rule, the FCC announced a further Notice of Proposed Rulemaking (at pages 347-348, ¶¶ 560-563). Duncan, Weinberg, Miller & Pembroke, P.C., Counsel to the Municipal Franchising Authorities, which Authorities filed extensive comments on the proposed Rate Regulation Rule, hereby submit comments on the supplemental Notice of Proposed Rulemaking.

In preparing its analysis of the appropriate benchmark rate for cable systems across the country contained in its Rule issued on May 3, 1993, the FCC conducted an industry survey of cable systems subject to effective competition, and not subject to effective competition, as "effective competition" is defined in the Cable Act of 1992. That survey specifically included a sample of systems in areas expected to have less than thirty

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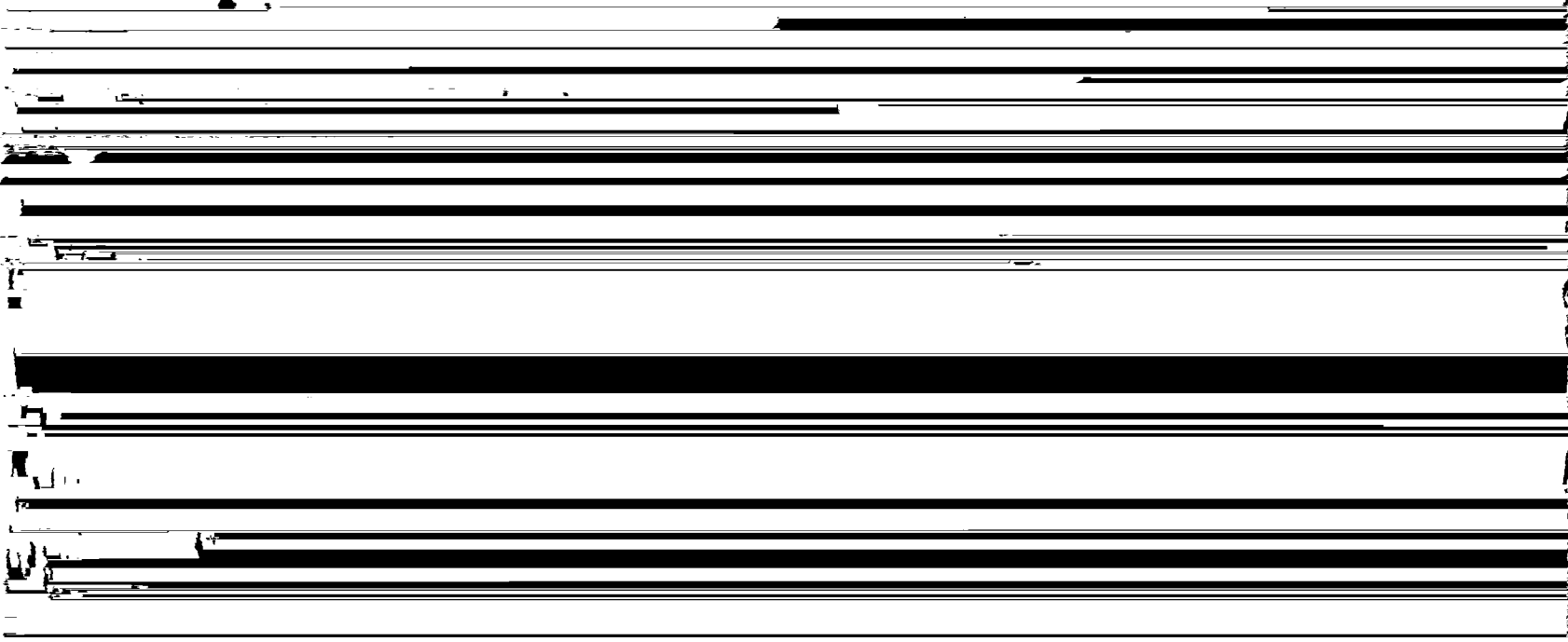
percent cable penetration. The comparison of rates subject to, and not subject to, effective competition resulted in a competitive rate differential of ten percent, which the FCC designated as the minimum level by which rates in franchise areas without competition should be reduced when this regulation goes into effect.

However, the FCC requested further comment on this portion of the rule, questioning whether exclusion from the original sample of rates of systems in low penetration areas may produce a better measure of competitive rate differential, since the low penetration may be due to factors other than an effectively competing system or systems. In addition, the FCC noted that the number of low penetration systems is very small, but the rates are significantly different to affect the competitive rate differential and thus the formulation of the benchmark rate. Indeed, the FCC noted, should this small group of systems be excluded from the sample, the competitive rate differential would be twenty-eight percent (28%) and not ten percent, suggesting that current rates for systems throughout the country should be lowered by the greater figure. The FCC asked whether it should therefore include in its sample only the rates of systems that face effective competition in the form of multichannel service providers.

Because the sample of systems with low penetration is so small, and the reasons for low penetration (as identified by the FCC) may have nothing to do with actual healthy competition from another operator, and because the impact of the inclusion of

these systems appears to skew the results of the study towards an artificially minimal differential, we would support the exclusion of these systems from the sample. For the reasons articulated by the FCC itself, we do not believe the rates of such systems provide an accurate measure of competitive rate levels. At the very least, the Commission should recalculate the results of the study to give a much reduced weight to the rates of these systems.

Although the Cable Act of 1992 identifies systems with penetration of thirty percent or less as one of the three categories of systems exempt from regulation, there is no provision in the Act which actually requires the Commission to include those systems in its rate reduction or benchmark rate formula calculations. The FCC was given wide discretion by Congress, based on its experience and judgment developed over years as a regulator, to devise a rate standard formula or formulas appropriate for the industry. A calculation of a competitive rate differential excluding the low penetration systems due to the concerns about their potential for distorting



percent, but the full twenty-eight percent from pre-regulated levels. There should be no different application of the differential (except as suggested above) than established in the Order.

The impact on the industry will need to be addressed by industry members. However, it seems apparent that, since there are so few systems in the category that we believe should be excluded, the truer measure of the competitive differential for the vast majority of the cable systems in the country is in fact twenty-eight percent. By applying this differential, the FCC comes far closer to true competitive rates and avoids allowing most systems an eighteen percent rate windfall than it would by applying the differential resulting from the inclusion of systems in this category in its sample.

The impact on consumers will be only positive and advantageous. The intent of Congress will be fulfilled, and the reduction in their rates will give American consumers a fairer cost for this product and service, and more funds in their pockets, a not insignificant result in this time of economic hardship for many.

WHEREFORE, for the foregoing reasons, counsel to the Municipal Franchising Authorities urges this Commission:

- 1) to exclude from the sample those systems with low penetration; and
- 2) to apply the resulting twenty-eight percent

differential to the reduction from pre-regulated rates
of cable rates across the country.

Dated: June 17, 1993

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Janice L. Lower", written over a horizontal line.

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